

In his Complaint and his attached affidavit, Plaintiff alleges that on November 8, 2006, Defendant Hudgins, a correctional officer, who was responding to a disturbance between Plaintiff and another guard, repeatedly kicked Plaintiff in the lower abdomen and groin and that as he did so Defendant's "fecal matter flew from his trousers [sic] leg forward onto [Plaintiff's] chest and head." Plaintiff further alleges that Defendant then urinated into a cup and "poured his urine into [Plaintiff's] ears, eyes, and face." According to Plaintiff, Defendant then "further loosened his trousers [sic] hems and again used his feces as a weapon. He smeared his feces into my face, head, mouth, eyes, ears, shoulders, and the pants and undershorts I was wearing." Plaintiff alleges that a camera man from National Geographic, who was filming the incident, then followed as Defendant led a bent over Plaintiff to the shower area where Defendant "removed more of his feces from his trousers [sic] hems and smeared it all over my buttocks while trying to force his feces into my rectum." Plaintiff seeks one million dollars in damages.

It is well settled that the court has authority to dismiss a plainly frivolous claim by an indigent plaintiff. 28 U.S.C. § 1915(e)(2). A frivolous claim is a claim lacking an arguable basis in either law or fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). After reviewing Plaintiff's Complaint, this Court concludes that Plaintiff's Complaint is frivolous and it must be dismissed. See Denton v. Hernandez, 504 U.S. 25, 32-33 (1992)(in determining whether complaint is factually frivolous, a district court is not required to "accept without question the truth of plaintiff's allegations," but rather is permitted to apply common sense and reject the fantastic); see also Adams v. Rice, 40 F.3d 72, 74 (4th Cir. 1994)(a court has the authority to dismiss claims that are obviously "fantastic" or delusional" and a plaintiff "must present more than naked allegations.").

Plaintiff's allegations are delusional¹ and the facts at issue are wholly incredible. Consequently this Court will dismiss Plaintiff's Complaint.

IT IS THEREFORE ORDERED THAT Plaintiff's Complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2).

Signed: October 22, 2008



Graham C. Mullen
United States District Judge



¹ As noted by Plaintiff himself in his Complaint, he has a past history of being treated for psychiatric issues.